

How to Subpoena a Witness

If you wish to subpoena a witness, you may obtain the subpoena from the Office of Administrative Hearings or CalPERS can send you a copy. It is your responsibility to contact your witnesses, arrange for them to be present at the hearing, and to pay any fees required.

The Hearing

Role of the Judge

The judge who will hear your case is an independent Administrative Law Judge with the Department of General Services, Office of Administrative Hearings. It is their job to receive and review the evidence in a case, and to write a recommendation to the CalPERS Board of Administration called a Proposed Decision.

Procedure

Administrative hearings are “public hearings,” but are generally not attended by anyone except the actual parties involved. The judge will officially open the hearing, and the CalPERS attorney will present the original Statement of Issues to be marked as the first exhibit. Each party will then be allowed to make an opening statement, if desired. The party challenging the CalPERS decision will have the burden of proof and will proceed first. The evidence is presented, and witnesses are called. Because of discovery, the documents and witnesses should already be known to you. Of course you have the right to question any witnesses. When the hearing is over, the case is “submitted.” Sometimes one of the parties or the judge may request that the parties prepare additional written argument. If so, the case is deemed submitted after the last written argument is received by the judge.

The Proposed Decision

The judge has 30 days from submission to write the Proposed Decision. The judge is to make the Proposed Decision based on which party had the most convincing, competent evidence to support its position. The judge submits the Proposed Decision to CalPERS, which has 30 days to provide you with a copy.

The Board's Decision

Acceptance/Rejection of Proposed Decision

The Administrative Law Judge's Proposed Decision is not the final decision. The CalPERS Board of Administration must vote whether or not to adopt the Proposed Decision as its own Decision. When you receive your copy of the Proposed Decision, you will be given the date that the Board will act on your case, and how you may submit further written argument if you wish. Sometimes, the Board decides not to adopt a Proposed Decision. If this happens, the Board Members will be provided with the court reporter's transcript of the hearing and all of the exhibits in the case (you will receive copies of these also). You may come and argue your case before the Board, and/or submit written argument. The Board will then make its own independent decision regarding your case, or the Board can remand the case to the Administrative Law Judge for the taking of further evidence.

Petition/Appeal of Decision

Any party who is dissatisfied with a Board Decision may petition the Board for reconsideration of its Decision, or may appeal to the Superior Court. You will be notified of this right when you receive your copy of the Board's Decision. After all appeal periods have expired, the Board's Decision is considered final, and will be acted upon. This is generally 30 days after adoption.

Precedential Decision

The CalPERS Board has the power to designate any Board Decision as a Precedential Decision.

The Effect of a Precedential Decision on Your Appeal

A Precedential Decision is binding on the parties in your appeal if the rule of law set forth in the Precedential Decision applies directly to the facts of your case. The parties in an appeal may cite Precedential Decisions that support their position to the Administrative Law Judge who hears the case, who in turn may rely upon it in writing the Proposed Decision.

Obtaining an Index or Copy of Precedential Decisions

An index and the full text of all CalPERS Precedential Decisions are available on the CalPERS Web site at www.calpers.ca.gov.

General Procedures for Administrative Hearings

California Public Employees'
Retirement System

Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707
(916) 795-3675

General Procedures

The following is intended only to be a brief, general outline of the hearing procedures written for the lay person. If you have any additional questions regarding these procedures, the California Public Employees' Retirement System Legal Office will be happy to discuss them. However, please remember that the CalPERS attorney will be unable to give you legal advice, as it is the attorney's duty to protect the interests of the client, CalPERS.

You have received this outline of the hearing procedure for two reasons:

- **CalPERS has denied your request or application, you or another party have filed a timely appeal of that denial, and requested a hearing.**
- **You are considering representing yourself at the administrative hearing, and you are not an attorney. (If you later decide to obtain representation by an attorney, please contact the attorney as soon as possible, but at least several weeks in advance of the hearing, so they will have ample time to prepare your case.)**

What Happens Next

Order of Procedure

1. The Hearing Date and Statement of Issues
2. Discovery of Evidence
3. The Hearing
4. The Proposed Decision
5. The Board's Decision

Hearing Date and Statement of Issues

CalPERS Responsibilities

As the administrative agency, CalPERS has the legal and financial responsibility to obtain a hearing date and hearing room, arrange for the judge and the court reporter to be present, and write the "Statement of Issues" (the written document which officially begins the hearing).

The Parties

There will be at least two "parties" (persons or entities having a real interest in the outcome) to this action, the petitioner and the respondent(s). CalPERS will be referred to as the "petitioner" (the party who requested the hearing); all other parties are generally referred to as "respondents." All parties named as respondents in the case do not necessarily have the same interests, and may not be on the "same side." If you have any questions regarding a particular party's position, please ask that party or the CalPERS attorney.

Pleadings/Court Documents

After CalPERS has obtained a hearing date and has drafted the Statement of Issues, and several weeks before the hearing date, you will be "served" with a copy of the Notice of Hearing, the Statement of Issues, and a copy of the law pertaining to discovery. Please read these documents carefully. The Notice of Hearing contains the date, time and location of the hearing, and other important information. The Statement of Issues contains a brief discussion of the issues involved, and the law upon which the application and denial was made. If you feel an issue has been omitted, please let us know as soon as possible, so the Statement of Issues may be amended. Some respondents wish to submit written argument to the judge prior to the hearing. While this is not necessary, it is permissible.

Confirmation of Hearing Date

If you are unable to attend the hearing on the scheduled date, please call the CalPERS Legal Office at (916) 795-3675 as soon as possible. CalPERS is reluctant to continue a case, and delays (continuances) are only granted for good cause. Any continuance must be granted by the judge.

Discovery of Evidence

Sharing of Information

Each party has the legal right to know what information other parties possess regarding the case. You may submit a written request to CalPERS or any other party to find out what documents, witnesses, or information they have relating to the case (regardless of whether they are actually going to present that evidence at the hearing). CalPERS, or any other party, also has

the right to obtain information from you. This sharing of information greatly reduces the amount of time required for the hearing. Contrary to being beneficial to the case, a "surprise" witness or evidence may actually be excluded by the judge.

Discovery Request

Each party is responsible for making a discovery request as soon as possible after the mailing of the Statement of Issues, and to answer any discovery request made of them as soon as practicable. (If only a portion of the information is available when the request is received, that portion is sent with the promise of sending on any additional information as soon as it is obtained.) If a party to the action does not respond to a discovery request, the judge can delay the hearing until the information is received.

What is Evidence?

Types of Evidence

Evidence may be classified as "direct evidence" or "hearsay evidence."

Direct Evidence

Direct evidence generally includes documents, objects, or testimony that is personally and directly known by the witness, without relying on information from other people or sources. You must have at least some direct evidence to support any issue that you wish the judge to decide.

Hearsay Evidence

In simplified terms, hearsay is generally evidence of a statement that was made by someone other than by the witness who is testifying. Hearsay evidence may be introduced to explain or supplement other evidence. Please note that the judge is not legally permitted to decide an issue only on the basis of hearsay evidence; there must be some direct evidence to support your position. It is possible for hearsay evidence to be introduced as direct evidence, but only if the parties agree in advance to treat it that way. There are also certain exceptions (in the civil court hearsay rules). If you would like more information about these exceptions, you may contact the CalPERS Legal Office.